

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LAUSTEVEION JOHNSON,

Plaintiff,

v.

JAMES FERBER et al.,

Defendants.

2:16-cv-00366-RFB-NJK

ORDER

I. DISCUSSION

On November 16, 2016, this Court issued a screening order on Plaintiff's original complaint. (ECF No. 4, 5). In the screening order, the Court stated that "Plaintiff shall have 30 days from the end of the stay to file an amended complaint if there is no resolution of this case during settlement negotiations. The amended complaint may only include additional or more specific allegations as to the Count II conditions of confinement claim and not add other claims at this time." (ECF No. 4 at 15). The Court stayed the case for 90 days and referred the case to the Inmate Early Mediation Program. (*Id.* at 16). The Court stated that during the 90-day stay, "no other pleadings or papers shall be filed in this case, and the parties shall not engage in any discovery." (*Id.*)

On November 23, 2016, Plaintiff filed a first amended complaint. (ECF No. 6). The Court notes that Plaintiff filed the first amended complaint in violation of the 90-day stay. The Court will not screen Plaintiff's first amended complaint at this time.

If Plaintiff does not settle this case during the Inmate Early Mediation Program, Plaintiff may file a motion for the Court to screen the first amended complaint (ECF No. 6). Alternatively, after the conclusion of the scheduled mediation, Plaintiff may file a second amended complaint. Plaintiff should note that any amended complaint "may only include

1 additional or more specific allegations as to the Count II conditions of confinement claim and
2 not add other claims at this time” as directed by the screening order. (ECF No. 4 at 15). If
3 Plaintiff attempts to add other claims, the Court will not screen those claims. Within 30 days
4 from the conclusion of the scheduled mediation, Plaintiff shall either file a motion directing the
5 Court to screen his first amended complaint or file a second amended complaint. If Plaintiff
6 fails to file a motion directing the Court to screen his first amended complaint or fails to file a
7 second amended complaint within 30 days of the conclusion of the scheduled mediation, the
8 Court will proceed on Plaintiff’s original complaint.

9 Plaintiff has also filed a motion for appointment of counsel. (ECF No. 3). A litigant does
10 not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims.
11 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.
12 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford
13 counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional
14 circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When
15 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood
16 of success on the merits as well as the ability of the petitioner to articulate his claims *pro se*
17 in light of the complexity of the legal issues involved.” *Id.* “Neither of these considerations is
18 dispositive and instead must be viewed together.” *Id.* In the instant case, the Court does not
19 find exceptional circumstances that warrant the appointment of counsel. The Court denies the
20 motion for appointment of counsel.

21 **II. CONCLUSION**

22 For the foregoing reasons, IT IS ORDERED that the Court will not screen the amended
23 complaint at this time and this case shall proceed to mediation as directed by the screening
24 order (ECF No. 4).

25 IT IS FURTHER ORDERED that, within 30 days of the conclusion of the scheduled
26 mediation, Plaintiff shall either file a motion directing the Court to screen his first amended
27 complaint or file a second amended complaint.

28 IT IS FURTHER ORDERED that if Plaintiff does not file a motion directing the Court to

1 screen his first amended complaint or file a second amended complaint within 30 days of the
2 conclusion of the scheduled mediation, this case shall proceed on Plaintiff's original complaint.

3 IT IS FURTHER ORDERED that the motion for appointment of counsel (ECF No. 3) is
4 denied.

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6 DATED: This 29th day of November, 2016.

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10 United States Magistrate Judge
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